

1 Jacob Fetman - 15-43716 - 8/18/2016

2  
3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF NEW YORK

5 JACOB FETMAN.

6 Case No. 15-01195,  
7 . 15-43716,  
8 . 16-01038,  
9 . 16-01064,  
10 . 16-01065

11 . Brooklyn, New York  
12 . Thursday, August 18, 2016

13 . . . . .

14 BEFORE THE HONORABLE NANCY HERSHY LORD  
15 UNITED STATES BANKRUPTCY JUDGE

16 ADJ PRE-TRIAL RE:

17 [1] COMPLAINT BY ROBERT J. MUSSO, TRUSTEE OF THE ESTATE OF JACOB  
18 FETMAN AGAINST MOSHE FETMAN, YAFFA FETMAN. RECEIPT NUMBER DEFERRED,  
19 FEE AMOUNT \$350. NATURE(S) OF SUIT:

20 (12 (RECOVERY OF MONEY/PROPERTY-547 PREFERENCE) :

21 (13 (RECOVERY OF MONEY/PROPERTY-548 FRAUDULENT TRANSFER) )

22 ADJ FOR STATUS PURPOSES - TRIAL DATE SET FOR 8/23 AT 10:30 AM -  
23 [33] MOTION TO AUTHORIZE/DIRECT BIDDING PROCEDURES FOR THE SALE OF  
24 REAL PROPERTY FIELD BY BRUCE WEINER ON BEHALF OF ROBERT J. MUSSO

25 ADJ PRE-TRIAL RE:

1 [1] COMPLAINT BY TAMAR FETMAN AGAINST ROBERT J. MUSSO, MOSHE FETMAN,  
2 YAFFA FETMAN, 4305 10TH AVENUE CORP., FEE AMOUNT \$350. NATUR(S) OF  
3 SUIT:

4 (21 (VALIDITY, PRIORITY OR EXTENT OF LIEN OR OTHER INTEREST IN  
5 PROPERTY)),

6 (91 (DECLARATORY JUDGEMENT))

7 PRE-TRIAL RE:

8 [1] COMPLAINT BY AISH HATORAH NEW YORK, INC. AGAINST JACOB FETMAN. FEE  
9 AMOUNT \$350. NATUR(S) OF SUIT:

10 (67 (DISCHARGEABILITY - 523(A)

11 (4), FRAUD AS FIDUCIARY, EMBEZZLEMENT, LARCENY)), (DISCHARGEABILITY -  
12 523(A)

13 (2), FALSE PRETENSES, FALSE REPRESENTATION, ACTUAL FRAUD))

14 PRE-TRIAL RE:

15 [1] COMPLAINT BY AISH HATORAH NEW YORK, INC. AGAINST ROBERT MUSSO,  
16 JACOB FETMAN, MERKZA, THE CENTER, INC., OTHER KALER. FEE AMOUNT \$350.  
17 NATURE(S) OF SUIT:

18 (21 (VALIDITY, PRIORITY OR EXTENT OR LIEN OR OTHER INTEREST IN  
19 PROPERTY))

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2 APPEARANCES:

3 For Debtor:

4 BY: IRA ABEL  
5 Law Offices of David Carlebach,  
6 Esq. (of Counsel)  
7 55 Broadway, Suite 1902  
8 New York, New York 100061

9 For Trustee:

10 BY: BRUCE WEINER  
11 Rosenberg, Musso and Weiner,  
12 L.L.P.  
13 26 Court Street, Suite 2211  
14 Brooklyn, New York 11242

15 For Moshe Fetman:

16 BY: GREGORY M. MESSER  
17 Law Offices of Gregory Messer,  
18 P.L.L.C.  
19 26 Court Street, Suite 2400  
20 Brooklyn, New York 11242

21 For Aish Hatorah New York:

22 BY: MARK FRANKEL  
23 Backenroth, Frankel and  
24 Krinsky, L.L.P.  
25 800 Third Avenue, 11th Floor  
New York, New York 10022

26 For Tamar Fetman:

27 BY: ANDREW CITRON  
28 Law Offices of Andrew Citron  
29 110 Wall Street, 11th Floor  
30 New York, New York 10005

31 Trustee:

32 Robert Musso  
33 26 Court Street, Suite 2211  
34 Brooklyn, New York 11242

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2                   (On the record)

3                   THE COURT CLERK: Matter Numbers Sixteen through Twenty in the  
4 case of Jacob Fetman and the Adversary Proceeding 15-1195, 16-1038 and  
5 16-1064 and 1065.

6                   THE COURT: Appearances please.

7                   MR. WEINER: Good afternoon, your Honor. Bruce Weiner,  
8 Rosenberg, Musso and Weiner attorneys for Robert Musso, Trustee.

9                   MR. FRANKEL: Mark Frankel, Backenroth, Frankel and Krinsky  
10 attorneys for Aish Hatorah New York.

11                  MR. MUSSO: Robert Musso, Trustee.

12                  MR. MESSER: Gregory Messer for Moshe and Yaffa Fetman.

13                  MR. ABEL: Ira Abel of -- of counsel to the law office of David  
14 Carlebach for the Debtor.

15                  MR. CITRON: Andrew Citron, C-I-T-R-O-N, 30 Wall Street for  
16 Tamar Fetman.

17                  THE COURT: You signed the order on the -- a little earlier on  
18 the stay relief, the amended order.

19                  MR. WEINER: Okay.

20                  THE COURT: You -- you're the one who -- who presented it.

21                  MR. WEINER: Not me.

22                  UNIDENTIFIED SPEAKER: No, Judge. I think it was --.

23                  MR. WEINER: Might -- maybe Mr. Frankel did.

24                  MR. FRANKEL: No, I did not.

25                  UNIDENTIFIED SPEAKER: Ira, didn't you?

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2 MR. ABEL: Yeah, I -- there is -- yes, that was the order. I  
3 submitted the order on the -- yes, that would be it I guess. The  
4 order --.

5 THE COURT: Did you -- they --.

6 || MR. ABEL: We filed on the motion.

7 THE COURT: I had a representation it was circulated.

8 MR. ABEL: Yes, it was. I'm -- I mis-remember -- I was thinking  
9 of the -- a different stay (u). Yes, I submitted it. It was  
10 circulated to everybody on the 7th. I asked for comments by the 11th.  
11 Didn't hear anything and submitted it today.

12                   MR. WEINER: Well, I -- I can't speak to that because I was out  
13 of the country on the 7th.

14 MR. ABEL: I -- I e-mailed it to everybody including everybody  
15 here.

16 MR. FRANKEL: Obviously it was being handled by the other firm.  
17 I don't know --.

18 MR. ABEL: And the other firm got it as well. I sent it to  
19 Effram --

20 MR. MUSSO: Judge, I'm not sure. There -- there may be more  
21 than one motion for stay reliefs. This is the one dated --

22 THE COURT: This is the one where the judge -- the -- the judge  
23 in the State Court didn't know what I had done.

24 MR. MUSSO: With regard to the appeals

25 MR. ABEL: Yes, this was the appeals one.

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2                   THE COURT: The appeals one.

3                   MR. ABEL: It's a motion to clarify the stipulation. That  
4 order. You asked me --.

5                   MR. MUSSO: Well, I don't recall seeing it. If you tell me you  
6 sent it to me I will look but I did not see it, I haven't reviewed it,  
7 Judge. And I'm sorry if -- if it was sent to me and I didn't look at  
8 it. It's a very important part of the case, and --.

9                   THE COURT: Can we print it?

10                  THE COURT CLERK: I can --.

11                  THE COURT: Undue it.

12                  THE COURT CLERK: Because it -- it has not hit the docket yet.

13                  THE COURT: Oh, oh, good.

14                  THE COURT CLERK: So let me put it on hold too.

15                  THE COURT: Okay. Okay. And then you were going to resettle.

16                  MR. MUSSO: That I did.

17                  THE COURT: Okay. And I -- did I get -- that didn't come -- did  
18 that come back up yet for resettlement of the fee order?

19                  MR. WEINER: Think it was resettled for Tuesday of this week.

20                  THE COURT: Okay. All right. All right. We now have it on  
21 hold. So if it's not right we can pull it back.

22                  MR. MUSSO: I just listed those four. Think there were four.

23                  THE COURT: That's all they did.

24                  MR. MUSSO: I think the -- can I take a quick peek, Judge?

25                  THE COURT: Yeah, you.

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2                   MR. MUSSO: Thanks.

3                   THE COURT: You can take a slow peek.

4                   MR. WEINER: I wasn't at the last hearing, so.

5                   THE COURT: Yeah, we heard.

6                   MR. WEINER: But all good things come to an end and now I'm  
7 here.

8                   MR. MUSSO: Looks good, Judge.

9                   THE COURT: Good. All right. Unhold it. All right. Now where  
10 are we and what are doing and where are we going to be on the 23rd?

11                  MR. WEINER: Okay. Well, why don't we go through all the  
12 different items and then I can tell the Court where we are with  
13 respect to them?

14                  THE COURT: And some of them are not even yours.

15                  MR. WEINER: Well, I can only speak to the ones are mine. I  
16 understand this is a dischargeability proceeding. That's not the  
17 Trustee's battle.

18                  THE COURT: All right.

19                  MR. WEINER: Mr. Frankel is here to take care of it. That --  
20 that's --.

21                  THE COURT: Okay. First -- first adjourned pretrial. That  
22 would be Zero one one nine five.

23                  MR. WEINER: That's the Trustee versus Moshe Fetman and Yaffa  
24 Fetman.

25                  THE COURT: That's where I have -- that adversary now has

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2 judgment.

3                   MR. WEINER: It was the -- the Trustee was given partial summary  
4 \*judgement --

5 THE COURT: Right.

6 MR. WEINER: -- avoiding the judgement lien as a preference.

7 The -- the reason for bringing that action was to avoid that lien.

8 The Trustee pleaded alternatively preference and foregone conveyance

9 the Court has granted judgement on the preference cause of action.

10 The Trustee doesn't really need the fraudulent conveyance action. The  
11 Trustee still believes the things that were alleged in there that this  
12 is not a real -- there's no real debt owed here. But the --.

13 THE COURT: But we avoided -- the avoidance of the lien under  
14 one provision.

15 MR. WEINER: The -- the Debtor believed but then -- and the --  
16 and the defendant's --.

17 THE COURT: Okay. But it also has the sale part in it too, no?

18 | Yes, no?

19 MR. WEINER: There was -- this was just --

20 THE COURT: Okay.

21 MR. WEINER: -- the reason the Trustee did this was because in  
22 order to sell the property pursuant to 363 F, one of the grounds for  
23 selling the property is that it has to show -- the Trustee has to show  
24 that the liens are subject to a bona fide dispute, so the Trustee  
25 started the action to show it was a bona fide dispute and actually

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2 succeeded in the action. So that lien doesn't exist.

3                   The other lienholder, the judgement creditor, Mr.  
4 Frankel's client, consented to the Trustee's sale of the property. So  
5 363 F is not -- is not an issue with respect to -- to that. Now  
6 subsequent to entry of judgement, the defendants in that action filed  
7 a claim which I believe that they filed a claim didn't -- I don't know  
8 that it said but probably because of 502 H which allows -- gives them  
9 thirty days from -- from an avoidance of a transfer under Section 550  
10 which this was, to file -- to file a claim.

11                  So there's now a filed claim. The Trustee still has doubts  
12 about the legitimacy of that claim but that doesn't need to be dealt  
13 with at this -- at this point in -- in time.

14                  THE COURT: Okay. So the -- you can do -- so this thing could  
15 be -- so the -- the point is that this could close.

16                  MR. WEINER: This could close. We could withdraw those causes  
17 of action without prejudice because we -- the -- we still want to  
18 reserve whatever allegations were made in the complaint may be  
19 applicable to a future claim objection should we get, you know, get  
20 that far. So I -- I don't want to --.

21                  THE COURT: All right. Well, I'll let you withdraw -- draw  
22 without prejudice because we didn't rule on it.

23                  MR. WEINER: Right.

24                  THE COURT: And so I think what you need to do is probably --.

25                  MR. WEINER: I mean, I assume -- I assume that Mr. Messer

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2 doesn't have any objections to that.

3                   MR. MESSER: No, there's no objection.

4                   THE COURT: All right. So --.

5                   MR. MESSER: Fine we understand that --

6                   THE COURT: Right.

7                   MR. MESSER: -- that may be an issue down the road.

8                   THE COURT: You file -- you file a -- file a letter that -- also  
9 order that you're entitled to withdraw without prejudice. File a  
10 letter as per my direction and so that they can close it.

11                  MR. WEINER: Okay. We will file it. We'll put a letter on the  
12 docket, Judge.

13                  THE COURT: All right. So this we'll close. Okay.

14                  THE COURT CLERK: That's Eleven ninety-five.

15                  THE COURT: Right.

16                  MR. WEINER: That's Eleven ninety-five.

17                  THE COURT: Okay. Now on -- okay. So the trial is on the -- is  
18 on the -- the sale.

19                  MR. WEINER: The trial is on the sale and the Trustee's right to  
20 sell but that is on hold right now because the -- we're waiting for a  
21 decision from the Court on the -- the -- as to whether the Debtor's  
22 parents are the true owners of this property through a constructive  
23 trust which is -- was briefed a few months ago and we're still --

24                  THE COURT: Right.

25                  MR. WEINER: -- we're still waiting.

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2                   THE COURT: Right.

3                   MR. WEINER: Once -- once that's resolved there's really nothing  
4 that would prevent the Trustee from selling one of the properties.  
5 The other adversary proceeding at least has to be at least partially  
6 resolved before the Trustee could sell another -- the other property.

7                   THE COURT: Okay. So you can't go ahead on this one until we  
8 decide that issue.

9                   MR. WEINER: That -- that's correct. So there's --.

10                  THE COURT: Okay.

11                  MR. WEINER: In -- in fact, I'm -- I'm not sure that there's  
12 really any particular reason to have a trial since it's the -- it came  
13 down to a pure legal issue which was -- which was briefed by both  
14 sides.

15                  THE COURT: A trial on what?

16                  MR. WEINER: Well, it was -- the Trustee filed a motion to be  
17 allowed to sell. It -- it was a contested proceeding. They opposed  
18 it.

19                  THE COURT: Right.

20                  MR. WEINER: The Court set it down at some point in the future  
21 for a trial --

22                  THE COURT: Right. Tuesday.

23                  MR. WEINER: -- which that day was August 23rd.

24                  THE COURT: Right.

25                  MR. WEINER: But then we -- we in essence even though it's a not

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2 an adversary proceeding --

3 THE COURT: In essence it was like the equivalent of --

4 MR. WEINER: -- I mean, I guess it's like a summary --

5 THE COURT: -- like a summary judgement within the motion.

6 MR. WEINER: -- like a summary -- like a summary judgement.

7 THE COURT: Okay. So you're waiting on that.

8 MR. WEINER: I'll wait -- we're waiting on that.

9 THE COURT: So the 23rd is not happening. Okay.

10 MR. WEINER: Right.

11 THE COURT: Okay. Okay. All right. Okay. Now we have Fetman  
12 versus Musso.

13 MR. WEINER: Yes. And that one I do need --.

14 THE COURT: Tamar Fetman?

15 MR. WEINER: Yes. And for that there seems several things that  
16 I -- that -- that we need to --.

17 THE COURT: Oh, wait a minute. I have to write. We'll adjourn  
18 -- we'll adjourn and we'll do it at the end. Okay.

Okay. I'm sorry, so this is zero one zero three eight?

20 MR. WEINER: Yes.

21 THE COURT: We did a pretrial scheduling order.

22 MR. WEINER: We did a -- which we need to talk about --

23 THE COURT: Okay.

24 MR. WEINER: -- because the pretrial scheduling order said the  
25 last -- the latest one which was entered on June 3rd said that

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2 discovery had to be completed by August 1. I -- on behalf of the  
3 Defendant and counterclaim Plaintiff sent out discovery demand dated  
4 May 26th. I mailed it to the address listed on the summons for Mr.  
5 Citron. It came back and I later found out that apparently he --  
6 that's not his correct address even though it was on the summons that  
7 -- that he prepared and it was -- he was at a different address on the  
8 same street in a different building.

9                   So I re-served it on June 13 to him and did not get any  
10 response. I got a phone call early -- and I sent a letter to him in  
11 early July saying you haven't responded to my document request. We  
12 had a phone conversation shortly after that that I would -- I would be  
13 getting some things.

14                   And then there was nothing until yesterday when Mr. Citron  
15 called me and said I would be getting some documents today. And would  
16 I consent to that and I said well we really need to come in and talk  
17 to the Court about that because, one, I'm very much not happy that we  
18 are now two months after I sent out a -- a document request and we got  
19 a few documents just -- just about two hours ago, which I want to go  
20 over because it's woefully inadequate.

21                   And we're also past the date that the Court set as the  
22 last date for discovery. So -- so we have to do something about that  
23 as well. So I -- that's I -- and I told that to Mr. Citron yesterday  
24 that -- that we would -- I intended to raise these issues. I'm not  
25 looking, you know, this is a discovery matter and, you know, these

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2 things should get worked out. I -- I don't think that there's --

3 there's a lot of, you know, some -- some issues in -- in here, but the

4 -- the Trustee's main counterclaim in this was an action pursuant to

5 363 H to be allowed to sell this property which purportedly if it --

6 if the complaint is correct is owned jointly by the Debtor and -- and

7 Tammy Fetman.

15 And I served a discovery request trying to get some  
16 documents concerning that. The rest of the issue as to whether she's  
17 a co-owner of the property is important and needs to be resolved  
18 because this is an unusual situation where the -- there was a deed  
19 prepared and then her name was crossed off of it. And -- and, you  
20 know, what the legal import of that under New York law is we -- we  
21 don't -- would have to be looked into and -- and perhaps even briefed.

22                   But the -- the more important issue to the Trustee at  
23 least in the short run is the being allowed to sell the property  
24 because then if the Trustee's allowed to sell the property as well as  
25 the other property on 10th Avenue, you know, and, you know, once the

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2 Court's decided the constructive trust issue in if it's decided in the  
3 Trustee's favor we could always -- we could always escrow half the net  
4 proceeds from one of the properties pending resolution of that.

5                   That doesn't need to be decide -- decided today. But in  
6 connection with that I got today a -- a response to the Trustee's, you  
7 know, first production of documents. I got, you know, several  
8 documents back. A copy of the deed which the Trustee already had. A  
9 mortgage interest statement from the -- from the bank which comes in  
10 both names. A -- an insurance binder that comes in both -- both names  
11 of Jacob and Tammy Fetman. And what purports to be a residential  
12 stabilized lease between Jake -- Tammy and Jacob Fetman and Moshe and  
13 Yaffa Fetman for this very property.

14                   A residential lease which is next door to the property  
15 that I understand -- and -- and for ten years, okay, beginning in  
16 2011, ending in 2021 with a ten year option after. Now this lease has  
17 never been mentioned before.

18                   THE COURT: Who is -- who is the landlord -- who is the  
19 --?

20                   MR. WEINER: The landlord is supposed to be Tammy and  
21 Jacob Fetman who are the record owners -- if her name really is on the  
22 deed are the record owners of the property.

23                   THE COURT: Right.

24                   MR. WEINER: And it's a -- it's a residential stabilized  
25 lease even though I believe this is a single family house and the

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2 stabilization laws of the State of New York don't apply to this  
3 property. But then not only was this lease never mentioned before but  
4 the fact that -- that -- that the parents who claim to be the owners  
5 of this property through a constructive trust, you know, had to go out  
6 -- went out and five years ago leased the very same property. It's  
7 just one of the many contradictions in positions in -- in this -- in  
8 this -- in this case. I mean, I could say --.

9                   THE COURT: Is there a pleading in the alternative.  
10                  They're living in the alternative.

11                  MR. WEINER: Well, you know, it's -- you know, I could  
12 say something like, you know, the truth to these people is kind of  
13 convenient. They kind of make whatever is convenient at the moment  
14 the -- they -- that's what they say. But then again the truth being  
15 convenient in the moment seems to be popular right now. The -- you  
16 know, I could make an allusion to somebody that's in the news  
17 prominently that does the same but I don't have to go there.

18                  You know -- but -- but it's -- but it's just unusual that  
19 this first is coming out now, okay. But I -- I can deal with it. I  
20 can deal with the sail of the property. We can sell it free of this  
21 lease if this is even a real lease.

22                  THE COURT: No. We can -- I mean it's an adversary  
23 proceeding to determine the validity of a lease I guess.

24                  MR. WEINER: Yeah, well, you know, it's just -- you  
25 know, where did this come from? You know, it was never mentioned --

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2 never mentioned by anybody in connection with the sale of the  
3 property.

4                   THE COURT: And what is the -- what is the consider --  
5 what is the -- what is the stabilized rent?

6                   MR. WEINER: Oh the stabilized rent for which -- for --.

7                   THE COURT: You're not supposed to laugh. You're the  
8 ones who produced it.

9                   MR. WEINER: That's a good -- that's a good question. It  
10                  doesn't -- oh, it's twenty-one hundred dollars a  
11                  month. For entire -- for an entire -- for the entire house. You  
12                  know, again, it's -- it's a one-family house. Rent stabilization laws  
13                  in my understanding only apply to six-family buildings and -- and --  
14                  and above. There's a lot of other blanks on here.

15                  You know, I don't think it's -- and -- and, again, like I  
16                  said, it's never been mentioned before. It's a direct contradiction  
17                  of the -- of the parents' position that they actually own this -- that  
18                  actually own this property -- you know, property.

19                  THE COURT: These are the three that sit next to each  
20                  other?

21                  MR. WEINER: The -- there are three properties that are  
22                  -- sit next to each other. One which is clearly owned by the parents.  
23                  They've owned it since the early '80s. And there's this part --.

24                  THE COURT: And who lives in that one? Is it -- that's  
25                  residential?

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2                   MR. WEINER: Yeah, they're --

3                   THE COURT: How lives in -- who lives in --?

4                   MR. WEINER: -- I believe they're all residential.

5                   THE COURT: Who lives in that one?

6                   MR. WEINER: Well, at least according to this lease  
7 that's --.

8                   THE COURT: No, no, no. That's -- you said the parents.

9                   MR. WEINER: The parents. They -- their present address  
10 was the one next door.

11                  THE COURT: Right and don't they live there?

12                  MR. WEINER: They -- they certainly did.

13                  THE COURT: How many houses can one person live in  
14 especially rent stabilization you're not -- you're only allowed one.

15                  MR. WEINER: Well, I -- you know, I think that they --  
16 they did live there. I believe that one of these properties was the  
17 house that the Debtor grew up in. And with --.

18                  THE COURT: All right. That's why we put people on the  
19 stand.

20                  MR. WEINER: And now I think -- now I think they're all  
21 living on Ocean Avenue but I'd have to go back and look at -- at -- at  
22 -- at property -- at you know --.

23                  THE COURT: So they may not be living there?

24                  MR. WEINER: I don't believe -- I don't believe they  
25 live -- actually at this time I don't think they live in either of

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2 these properties, but. They certainly don't live and no one's ever  
3 alleged that they live in the 4305 --.

4                   THE COURT: Okay. But the point is you didn't have the  
5 benefit of that to examine anybody.

6                   MR. WEINER: Right.

7                   THE COURT: Who have you examined so far?

8                   MR. WEINER: Just the Debtor. I did a -- we did conduct  
9 a 2004 exam of the Debtor but, again, it was never raised in the  
10 context of the Trustee's motion to -- to sell. The -- you know, the  
11 parents came --.

12                  THE COURT: Let -- let's go back a minute.

13                  MR. WEINER: You know, I mean, the parents -- the  
14 parents --.

15                  THE COURT: Mr. -- Mr. Citron, why do you feel and your  
16 client feels that this is not an important place? That this -- that  
17 this -- that -- that time doesn't matter and dates don't matter and  
18 responding to discovery doesn't matter.

19                  MR. CITRON: I don't -- I don't feel that at all.

20                  THE COURT: This is an important place.

21                  MR. CITRON: Yes.

22                  MR. WEINER: Well, there -- there's some other things  
23 about the discovery. In -- in response to most of the things they say  
24 that subject to and without waiver of the above objection Ms. Fetman  
25 will produce all responsive non-privileged documents within her

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2 possession, custody and control. Will produce. So when is this will  
3 produce actually going to happen?

4                   THE COURT: And of course anything that is -- that is  
5 within the document request that you view is privileged requires a  
6 privilege log. It's very, very specific as to what the document is,  
7 who it's -- who it's between and all the things one -- I can give you  
8 all of the details you need for your privilege log. You can't just  
9 say something's privileged.

10                  MR. WEINER: And they -- I wasn't --.

11                  THE COURT: Can't just say something's work product. You  
12 have to -- you have to produce to create logs.

13                  MR. WEINER: And it wasn't an extensive document  
14 request. It was mostly wanting to know what documents they were  
15 relying on in -- in opposing the Trustee's 363 H action.

16                  THE COURT: And -- and why does it take months?

17                  MR. WEINER: And --.

18                  MR. CITRON: Again, unfortunately, counsel for the  
19 Trustee is leaving out one conversation. I called him in June and we  
20 didn't just have the conversation he relayed. What we discussed is  
21 the two of us would mutually apply for an extension of the discovery  
22 deadlines. Then the Trustee's counsel was overseas in Europe so it's  
23 -- has nothing to do with me not disregarding deadlines, not thinking  
24 deadlines are important.

25                  I have produced the documents. There might be a document

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2 or two outstanding and, you know, just because I -- I can produce that  
3 by tomorrow and, I mean, we complied with the request. So it's not  
4 that we don't view this as -- as important. We view this as --.

5                   THE COURT: That's all you've got on all of the -- all -  
6 - no other papers regarding any of this?

7                   MR. CITRON: Exactly. There may be initial document --.

8                   MR. WEINER: It's -- it's been -- it's been two -- two  
9 months and this is all they came up with. And then the most -- one of  
10 the most curious things at all -- of all is that this discovery  
11 response which, again, is dated today and received today. And I'll  
12 remind the Court that Ms. Fetman is the Plaintiff in this action.

13                   Says Ms. Fetman does not consent expressly or impliedly  
14 to the entry of final orders of judgements by the Bankruptcy Court  
15 with respect to any matters or claims raised in this proceeding.

16                   Ms. Fetman reserves the right to seek abstention and or  
17 withdrawal of the reference in this adversary proceeding. She's the  
18 Plaintiff. She came into this Court. She brought this proceeding  
19 against the Trustee. She -- she's waived all of those things.

20                   THE COURT: Yes, yes, yes, yes.

21                   MR. WEINER: You know --.

22                   THE COURT: Everybody -- everybody will tell you that  
23 sitting at this table. Every -- every one of them. Even Mr. Abel.

24                   MR. WEINER: I mean -- you know, so. You know this --  
25 so this is the kind of -- this is what -- after two months this is

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2 what I get and two hours before the hearing. So and if there are no

3 documents that show that, that -- that the detriment to her outweighs

4 the benefit to the bankruptcy estate then they should either consent

5 to judgement or -- you know, on -- on that matter or we'll -- we'll

6 move for summary judgement. You know, or I could ask her a couple

7 questions at the -- you know, at a deposition. What's the detriment

8 to you or -- or the Trustee selling this property that you don't --

9 don't live in.

13 MR. WEINER: Yes, purports to be a lease on this  
14 property from the Debtor and his wife to --

15 THE COURT: To -- okay.

16 MR. WEINER: -- to the -- to the Debtors.

17 THE COURT: So then -- but on the face of it that lease  
18 means that -- that Tammy Fetman doesn't live there.

19 MR. WEINER: Which she doesn't live there. She lives  
20 out of -- at 1743 Ocean Avenue with the Debtor.

25 MR. WEINER: No. We're not -- she may be a joint owner

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2 but this is not a -- this is not the Debtor's --

3                   THE COURT: Right. So the --.

4                   MR. WEINER: -- it's not the Debtor's residence, it's  
5 not her residence. They live together at 1743 Ocean Avenue.

6                   THE COURT: So what is -- what is the detriment? You  
7 pled detriment.

8                   MR. CITRON: Again, we -- we are not claiming that she  
9 lives there. The detriment would be from a forced sale not realizing  
10 the price that the property could be realizing under the proper  
11 conditions. That -- that type of detriment. And I think he does have  
12 to depose my client to whatever reason she has that she contends this  
13 is a detriment.

14                  MR. WEINER: No, Judge. That's not -- that's not a  
15 defense to -- to -- to my 363. That maybe an objection to a proposed  
16 sale that the Trustee has saying the Trustee didn't properly mark it  
17 in or he hired -- he didn't hire the right broker or the right  
18 auctioneer.

19                  THE COURT: We don't have forced sales here.

20                  MR. WEINER: You know -- you know --.

21                  THE COURT: We don't have forced sales. We have sales  
22 that get marketed. We have sales that -- I mean marketed out there.  
23 They have -- they go to these -- they go to auctioneer type brokers or  
24 slash brokers who have list serves a mile long. Notice goes out to  
25 every single multiple listing. Notice goes out to every single

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2 investor and -- and particularly they know everybody in the community  
3 and out of the community. I mean, it -- it's -- it's -- they go --  
4 they have virtual -- virtual document places.

5                   MR. WEINER: And even after all that, okay, we've had --  
6 Court has already authorized the Trustee to hire M.Y.C. to -- to  
7 market and sell this property. Even after all that if we then come --  
8 they then come up with a buyer in this process, they -- the -- the  
9 other parties in the case still have the right to object and said, you  
10 know, they didn't do the right thing.

11                  They -- the property is worth X dollars and they only  
12 got Y dollars. I mean, they -- they -- you know, but that's  
13 not a defense to a 363 H action.

14                  MR. ABEL: Just to interject something, it's -- it's my  
15 understanding that at one of the early hearings in this, your -- your  
16 Honor I guess stated from the bench that there's not going to be any  
17 sales until the appeals go through. So at that point, you know, once  
18 the appeals are done and it may turn out that the --.

19                  THE COURT: When did I say that?

20                  MR. ABEL: Apparently at the -- one of the early  
21 hearings, your Honor, I'm told.

22                  MR. WEINER: Not one that I was at.

23                  THE COURT: You'd have to find a transcript. I don't  
24 recall.

25                  MR. ABEL: I'm just bringing that up as -- because I've

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2 just been --.

3 THE COURT: I don't recall ever saying that there would  
4 be no sales until the appeals are -- I don't recall that at all.

5 MR. ABEL: Okay. Thank you, your Honor.

6 MR. WEINER: I mean that's tantamount to giving a state  
7 pending appeal --

8 THE COURT: Yeah.

9 MR. WEINER: -- which nobody -- which -- which they --.

10 THE COURT: Which somebody would have to do on notice.

11 MR. ABEL: Right. Which certainly the --.

19 MR. WEINER: Yes, and we -- we recognize --.

20 THE COURT: I mean, my memory is not -- I mean my memory  
21 is not infallible.

22 || MR. WEINER: Well -- well --.

23 THE COURT: If you can find it in the transcript you can  
24 find it in the transcript, you'll show it to me.

25 MR. WEINER: But -- yes. Where the Trustee agreed to

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2 all that -- agreed to that and the Debtor -- and that's why the  
3 Trustee is not taking control of that appeal instead of letting the  
4 Debtor do it.

5                   THE COURT: Right. That's what I remember and I -- if -  
6 - if I said anything else find it for me in the transcript.

7                   MR. WEINER: So I, you know, I don't -- I don't want to  
8 -- you know, under the circumstances it's -- it's not my nature to --  
9 to take the (u) --

10                  THE COURT: No, I would --.

11                  MR. WEINER: -- even though -- even though there's been --  
12 I think that there's been --.

13                  THE COURT: Well -- well print it but understand -- I'll  
14 print it and I'll extend the time. But understand that I'm not going  
15 to make a regular habit of this in this case. I mean, I -- I said  
16 last time when I thought there was somebody else playing games that  
17 we're not going to play games in this case. Not before this judge,  
18 not in this case. Stop the game playing. We have to get to the facts  
19 and we have to get --

20                  MR. WEINER: So --.

21                  THE COURT: -- everyone's supposed to do what they're  
22 supposed to do.

23                  MR. WEINER: So what -- what I would like, I would like  
24 all the documents. I'd like specific responses, and if there are  
25 things --.

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2                   THE COURT: So, well, you got the -- you got the answer  
3 for the detriment. It's a forced sale.

4                   MR. WEINER: Right. Okay. But if there's any documents  
5 that -- that they have I -- I want to know about them.

6                   THE COURT: And if they don't produce them that means  
7 they don't have them. Or they can't -- if they have them and they  
8 don't produce them they're not going to be able to use them.

9                   MR. WEINER: Right. So and but -- and if there are, you  
10 know, I got all this general objection. Well, we -- if it's not in  
11 our possession we can't produce it and it may be privileged and we --  
12 so let -- let them come with a specific response and all the documents  
13 and let's set a deadline for that. And then I'm sure we can agree  
14 upon a date to take Mr. Fetman's deposition.

15                   THE COURT: Well, you may also want to take other  
16 depositions based upon --.

17                   MR. WEINER: Based on what they turn up. But right now,  
18 you know, with the purposes of this adversary proceeding --

19                   THE COURT: Up to you.

20                   MR. WEINER: -- for this adversary proceeding which only  
21 has two issues, is her name on the deed and does the Trustee have the  
22 -- notwithstanding her name being on the deed, does the Trustee have  
23 the right under the 363 H or New York partition law to sell this  
24 property?

25                   THE COURT: It was done -- it was just crossed off.

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2 There was nothing else replaced with it.

3                   MR. WEINER: Right. It was just crossed out. But, you  
4 know, but, again, at the -- but at the same time it was a mortgage  
5 document that does have her name on it, so.

6                   THE COURT: No, I'm not -- I wasn't -- I wasn't -- I  
7 wasn't trying --

8                   MR. WEINER: So, you know -- it -- it --

9                   THE COURT: -- to get to the -- I wasn't -- this isn't  
10 the trial. I just -- it was a clarification.

11                  MR. WEINER: -- very much -- you know.

12                  THE COURT: All right. So I'm extending this to how  
13 long? I don't want to be a situation where then I'm told we have  
14 holidays.

15                  MR. WEINER: Oh, no, there's no holidays in October.

16                  THE COURT: So let's get it done -- that's right. So --  
17 now, Mr. Citron, you're -- you're not taking any discovery, correct?  
18 Or are you?

19                  MR. CITRON: I -- I might be.

20                  THE COURT: Well, then what are you waiting for? If  
21 August 1st was the deadline shouldn't you have served some?

22                  MR. CITRON: I -- again, I haven't identified anyone but  
23 were there -- if we can locate witnesses I would like an opportunity  
24 to take their deposition. We disclosed the names of certain  
25 witnesses. Right now I don't believe we need their depositions but if

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2 -- if --.

3                   THE COURT: Well, I'm going to give you -- what?

4                   MR. WEINER: I don't know what witnesses they have  
5 disclosed.

6                   MR. CITRON: It's in my Rule 26 disclosures.

7                   MR. WEINER: All right.

8                   THE COURT: Well, we'll go to September 2. Discovery  
9 completed by September 2. So if you're going to take any depositions  
10 over I suggest you hurry up.

11                  MR. CITRON: Is -- is that enough time to -- I'm just  
12 saying we're at the --.

13                  THE COURT: Well, it would have been if you took -- if  
14 you served them.

15                  MR. CITRON: If -- if I could ask for slightly longer  
16 period of time in case there are any --.

17                  THE COURT: Well, who are you talking about? Well  
18 tell me who you're talking about deposing?

19                  MR. CITRON: Well, I listed in my Rule 26  
20 disclosures we have the -- the parents. I don't know if we want to  
21 depose them or not. At the moment I don't think we do.

22                  THE COURT: Well, you'll decide and you could get their  
23 deposition before September 2nd.

24                  MR. CITRON: I'm -- I'm just saying. We --.

25                  THE COURT: I'm assuming they're not going to object to

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2 the service.

3                   MR. CITRON: We have the title company who was present at  
4 this closing. I so far haven't identified a witness who specifically  
5 has knowledge of this, but I'm just saying potentially whether there's  
6 -- there's someone we might want to depose.

7                   MR. WEINER: Well, if there is somebody that they  
8 identify at the title company I may well want to depose that person so  
9 --.

10                  MR. CITRON: Well that's fine. Thus far we haven't  
11 identified anyone.

12                  MR. WEINER: But I don't know that there's really any,  
13 you know, factual -- it -- whatever happened happened. I don't know  
14 what the legal effect of it is, but -- but that's -- you know.

15                  THE COURT: You get somebody on the witness stand from a  
16 title company to tell you what happened and at closing.

17                  MR. CITRON: I agree.

18                  THE COURT: I'll bring you chocolates.

19                  MR. CITRON: Okay.

20                  MR. WEINER: Then maybe there's a title insurance policy  
21 I'd like -- you know --.

22                  THE COURT: Well, that's a different issue.

23                  MR. WEINER: Well, it be -- be interesting to see whose  
24 name is on the title insurance policy.

25                  MR. CITRON: I don't have a copy of that but I also

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2 would be interested to see.

3                   MR. WEINER: Well --.

4                   THE COURT: Well, who would have a copy of the title  
5 insurance policy if there was a title insurance policy?

6                   MR. CITRON: I don't know.

7                   MR. WEINER: Presumably Mr. Citron's client and the  
8 Debtor would have a copy of that since at least one of them is  
9 definitely the owner of the -- owner of the property and -- and  
10 perhaps both of them.

11                  MR. CITRON: I would be happy to look into that.

12                  MR. WEINER: So it would be interesting to see who they  
13 insured.

14                  THE COURT: I'll give you till September 9th final. No  
15 extensions.

16                  MR. CITRON: Thank you.

17                  MR. WEINER: I'd -- I'd like to set a date when Ms.  
18 Fetman's going to appear for her deposition.

19                  THE COURT: Okay. We'll do that in a minute. I have to  
20 move the date for the -- for the pretrial memo. Joint pretrial memo.  
21 Joint pretrial memo date. It was currently September --

22                  MR. WEINER: 16.

23                  THE COURT: -- 16.

24                  MR. WEINER: And the problem with pushing it back the  
25 corresponding amount of time is that we do run right smack into the

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2 middle of holiday.

3                   THE COURT: November 3rd. Okay. And do you have a date  
4 for Tammy Fetman's -- some dates for Tammy Fetman's deposition before  
5 the holidays? Before -- well, forget -- before the holidays --.

6                   MR. WEINER: Well (u).

7                   THE COURT: Before September 9th.

8                   MR. WEINER: -- before September 9th, right. So why don't  
9                   --?

10                  THE COURT: Before September 9th. I corrected myself.

11                  MR. CITRON: I would ask not for the period August,  
12 let's say 25th to September 2nd because she may not be here during  
13 that period. She may be out of -- not in New York City during that,  
14 you know. I'd ask for either before that or after that.

15                  THE COURT: All right. Then how about -- well, when are  
16 you going to give him the documents?

17                  MR. CITRON: I essentially have completed -- I -- what I  
18 -- if I -- I guess I'd ask for a week but I -- I just have a couple  
19 more documents.

20                  MR. WEINER: But --.

21                  THE COURT: When is she leaving?

22                  MR. CITRON: I believe it's the -- around the 25th.

23                  THE COURT: That's -- that's a week from today.

24                  MR. WEINER: Week from today. I -- it doesn't seem to  
25 me to make sense to try to do a deposition in the next week. So --

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2                   THE COURT: Okay.

3                   MR. WEINER: -- maybe right after she gets back. She's  
4 coming back September 2nd which is right before the holiday weekend.

5                   THE COURT: So you want the 6th or the 7th?

6                   MR. WEINER: 7th is better for me.

7                   THE COURT: All right. But I'm ending this on the 9th.

8 Okay. Tammy Fetman will appear on the 7th, right?

9                   MR. CITRON: I have actually three matters scheduled for  
10 that day. I don't know if there's any other -- what was -- was there  
11 another option?

12                  THE COURT: Why don't we just forget it then? Maybe we  
13 don't have to depose her.

14                  MR. CITRON: No, I can -- I didn't say that. I -- I --  
15 I can --

16                  THE COURT: She's away for three weeks or two weeks and  
17 then you're -- when is she going to --

18                  MR. CITRON: I will find another --.

19                  THE COURT: -- I'll put it to you. When is she coming  
20 for a deposition?

21                  MR. CITRON: Is -- I don't have a calendar in front of  
22 me but is September 6th a Monday or is that the --?

23                  THE COURT: It's a Tuesday.

24                  MR. WEINER: It's a -- it's a Tuesday. But I've got --.

25                  MR. CITRON: I'm -- I'm -- I'm available the 6th and I

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2 | think she is as well.

3 MR. WEINER: But it's the day after a holiday weekend  
4 and I have got some court that day. So --.

5 THE COURT: What about the 8th and I'll move the  
6 discovery to the 12th?

7 MR. WEINER: I -- the 8th is fine with me. I have  
8 nothing --.

9 MR. CITRON: If we could start later in the day. I do  
10 have a first thing court appearance, but if we could start at eleven  
11 that's fine for me.

12 MR. WEINER: Well, actually I've got -- I've got some  
13 calendar in the -- well, no, that's not going to go forward. Yeah,  
14 the 8th is good.

15 THE COURT: Okay.

16 MR. WEINER: The 8th is good. Whatever time --.

17 THE COURT: September 8th at eleven o'clock. Where are  
18 you doing it?

19 MR. WEINER: In my office.

20 THE COURT: His office. I'm moving the -- moving it  
21 till the -- the discovery deadline, till the -- the 12th. If it turns  
22 out you need more time you'll let me know.

23 | MR. WEINER: Yes, we will.

24 THE COURT: All right. September 12th. She's coming  
25 for a deposition on the 8th. Okay. Don't go away anybody because

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2 we're going to get a date for everything, but first we're going to  
3 turn to Mr. Frankel.

4                   MR. FRANKEL: Your Honor, I didn't realize there was any  
5 that ---.

6                   THE COURT: I have -- (u) the adversaries at  
7 pretrials.

8                   MR. FRANKEL: Yeah, I believe there's a pretrial order  
9 entered in --

10                  THE COURT: Right.

11                  MR. FRANKEL: -- in that which has all of the deadlines.

12                  THE COURT: Right, let's look at it.

13                  MR. FRANKEL: So I -- I don't -- I did not ask my co-  
14 counsel who's handling it to appear. I had thought that the pretrial  
15 had resolved whatever open issues were there in terms of  
16 --.

17                  THE COURT: I just -- I mean, I -- we -- we carry them  
18 so that if there are any issues to chat about we chat about them.  
19 Yeah, they're all -- all of them were adjourned for today. Let me  
20 just see what's the docket shows.

21                  THE COURT CLERK: There's a summary judgement.

22                  THE COURT: Oh, there's a summary judgement motion.

23 Okay. That's it, okay. Because I don't see -- there was an answer.  
24 I -- there's no pretrial scheduling order yet because we held off  
25 because of the summary judgement motion. And on the next one too?

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2                   MR. FRANKEL: The next one has -- has a pretrial order.

3                   THE COURT: Okay.

4                   MR. FRANKEL: I think it was July 11th.

5                   THE COURT: Yeah, pretrial scheduling order. Discovery  
6 deadline August 30 -- the discovery deadline on that one is August  
7 31st.

8                   MR. FRANKEL: Excuse me, Judge?

9                   THE COURT: The discovery deadline on the last one is  
10 August 31st.

11                  MR. FRANKEL: Right.

12                  THE COURT: And the motion for summary judgement is  
13 returnable October 6th. So does it make sense to -- how much time did  
14 we put aside? All right. We put aside an hour for that motion for  
15 summary judgement on October 6th. Probably enough. And the question  
16 is shall we just carry everything on today until then?

17                  MR. WEINER: That -- that makes sense.

18                  THE COURT: Right.

19                  MR. ABEL: Excuse me, if I may, your Honor?

20                  THE COURT: Well between -- well between Rosh Hashanah  
21 and Yom Kippur. Yes.

22                  MR. ABEL: If there's a discovery deadline and a summary  
23 judgement motion wouldn't make sense to extend the discovery deadline  
24 until after the summary judgement because --?

25                  THE COURT: No, no, no, no, no. There's no pretrial

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2 scheduling order in the -- in the adversary with the summary  
3 judgement.

4 MR. ABEL: Okay. Thank you.

5 THE COURT: It was in another one. Okay. So I'm just  
6 going to -- I may as well not have everybody constantly back here so I  
7 can just use the October 6th date. October 6th at eleven thirty for  
8 everything. Anything else?

9                   And Mr. Messer I'm sure will make his clients available if  
10 necessary, correct?

11 MR. MESSER: That's correct, your Honor.

12 THE COURT: Okay. Anything else? We're done?

13 MR. WEINER: Not -- not from my end.

THE COURT: Anybody else? Okay. Thank you.

15 (The proceeding concluded)

16 || CERTIFICATE

17 I certify that the foregoing is a correct transcript from  
18 the electronic sound recording of the proceedings in the above-  
19 entitled matter.

20  
21 *Jadwin O. Spragg*  
22

24 | Judith Spriggs  
Transcriptionist

19 October, 2016  
Date

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800.523.7887

8-18-2016, Brooklyn, NY, In the Matter of J. Fetman Associated Reporters Int'l., Inc.

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